

Appl. No. 10/823,829
Amendment dated September 28, 2009
Reply to Office action of May 28, 2009

COMMENTS / ARGUMENTS

A third declaration of Alan L. Colquitt, PhD (the "third Colquitt declaration") is submitted herewith. Dr. Colquitt has experience in the field of test development, validation, and psychometrics. Applicant believes to be one of at least ordinary skill in the art. Consideration of the third declaration is requested.

The Official Action rejects claims 1, 3, 5, 7, 9, 11, 13, 16, and 21-28 under 35 U.S.C. 102(e) as being anticipated by U. S. Patent Publication No. 2002/0045154 to Wood et al., ("Wood"). Applicants submit that the third Colquitt Declaration explains deficiencies in Wood and the differences between the cited reference and the claims as one of ordinary skill in the art understands the significance of the claim language. Accordingly, Applicants submit that the third Colquitt Declaration provides evidence on the interpretation of the cited prior art and the claims in the present application, and compels the Examiner to withdraw the pending prior art rejections and place the application in a condition for allowance. Furthermore, should an advisory action be issued in response hereto, a detailed reasoning should be included that explains the propriety of substituting the Examiner's point of view in place of the view of one skilled in the art such as Dr. Colquitt.

First, claim 1 requires "providing a plurality of individual capability tests to rate a plurality of competencies of an individual." The Official Action states that such a limitation is taught by Wood because Wood states that "it makes possible the creation and delivery of content, advice, and people profiles determined from a user's responses to a series of personality tests" and further states that "the system can also be used to find people with particular skills or competencies." While Wood posits that such a use would be possible, Wood fails to enable such use. One of ordinary skill in the art would require undue experimentation to achieve such a use. The proposed alternative is not one where one test could be substituted for the Kiersey Temperament Sorter to then automatically provide results regarding competencies as suggested by the Official Action. Accordingly, Wood fails to anticipate claim 1. This argument applies equally to independent claims 5, 9, and 14.

Second, as previously noted, claim 1 requires "providing a plurality of individual capability tests to rate a plurality of competencies of an individual." Accordingly, claim 1 requires the use of a plurality of capability tests as input to output a rating of a plurality of competencies of an individual. In rejecting this claim, the Official Action cites Wood as measuring competencies. However, none of the citations provided by the Official Action teach that competency information is extracted from individual capability tests. Furthermore, paragraph 337 of Wood states that competency models/tests can also be used instead of the Kiersey Temperament Sorter and the system can be used to find competencies. Again, this would involve the input of a competency test to output of "[finding] people with particulars kills or competencies." As noted by Dr. Colquitt in is 3rd declaration, Wood fails to teach using capability tests to render competency ratings. Accordingly, claim 1 is in condition for allowance. This argument applies equally to independent claims 5, 9, and 14.

Third, Wood fails to teach outputting of a rating of competency. Wood makes the non-enabled statement that "the system can also be sued to find people with particular skills or competencies." However, as noted by Dr. Colquitt Wood fails to teach that a rating of competency is provided. Accordingly, claim 1 is in condition for allowance. This argument applies equally to independent claims 5 and 9.

Fourth, Wood fails to teach "creating a comprehensive... evaluation report that rates the plurality of competencies... and providing the comprehensive individual capability evaluation to the individual." Wood states "the administrator can view the results via a series of reports." Also, the Official Action cites "employment matching report based on selection of traits, skills, and competencies to a potential employer, Para. 337; or career action plan to tell employee how to get along with boss, paras. 337 to 309." An employee matching report is not described as a comprehensive evaluation report that rates the plurality of competencies. Furthermore, such a report is described as being provided to an employer, not the applicant. Also, a "career action plan to tell an employee how to get along with a boss" is not disclosed as a comprehensive evaluation report that rates the plurality of competencies. Accordingly, as noted by Dr. Colquitt,

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the Official Action fails to cite a comprehensive evaluation report that rates the plurality of competencies and fails to teach providing a comprehensive report to the individual. Accordingly, claim 1 is in condition for allowance. Each of claims 5 and 9 require creating a comprehensive report including competency ratings. Claim 14 also requires creating a comprehensive report. Claim 9 also requires that the report be provided to the individual. Thus, the relevant arguments apply to each of those claims.

Additionally, with respect to the rejection of claim 2, the Official Action cites Figs. 7E, 8E, 9E, and 10E of Bonnstetter as teaching "a cross-referencing step includes creating a plurality of hallmark analysis ... relating to a specific quality of the individual." Applicant notes, and Dr. Colquitt notes that the cited figures of Bonnstetter do not show the cross-referencing of multiple tests. Rather, the figures show surveys that ask people what qualities are important for a certain job. They are not rating the qualities present in an individual. Furthermore, the surveys are not a product of cross-referencing responses from a plurality of tests.

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Conclusion

For all of the above reasons, Applicants submit that claims 1-28 **are in allowable form** thereby placing the application in condition for allowance. Applicants respectfully request allowance thereof.

Should any questions concerning any of the foregoing arise, Examiner is invited to telephone the undersigned at (317) 237-0300.

In the event that Applicants have overlooked the need for an extension of time or a payment of fee, Applicants hereby conditionally petition therefore and authorize that any charges be made to Deposit Account No. 02-0390, BAKER & DANIELS.

Respectfully submitted,

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